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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1971

Supreme Court, U.S.
FILED
SEP 10 1971

No. 71-384

ERNEST KLEIN,

Petitioner,

vs.

JOHN J. BOWER, WILLIAM F. O'CONNOR, JOHN GARDNER, BOWER, O'CONNOR & GARDNER, a Partnership, MARY ANNA MACUKAS, MARY ANN OATES, and CAROLYN SCHIFF,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1971

ERNEST KLEIN,

Petitioner

vs.

JOHN J. BOWER, WILLIAM F. O'CONNOR
JOHN GARDNER, BOWER, O'CONNOR & GARDNER
a Partnership, MARY ANNA MACUKAS,
MARY ANN OATES, and CAROLYN SCHIFF,

Respondents.

To the Supreme Court of the United States;

Ernest Klein, Petitioner, Pro Se, prays for a writ of certoriari to review the order of the United States Court of Appeals for the Second Circuit, dated June 21, 1971, denying petitioner's motion for an order,

(a) declaring that petitioner has the unrestricted right to retain counsel to represent him in his appeals;

(b) declaring that counsel so retained, cannot be prosecuted for contempt of court for violating the provisions of a State court Preliminary Injunction Order, dated July 10, 1968;

(c) extending petitioner's time to perfect his appeals and to retain such counsel; and for other relief; without being placed in jeopardy or violation of the aforesaid State court Preliminary Injunction Order.

OPINIONS AND ORDERS BELOW

1. The Order granting Preliminary Injunction, dated July 10,1968, issued by the Supreme Court of the State of New York, County of New York, is printed as Appendix A, infra.

2. The order of the Court of Appeals of the State of New York, dated June 4, 1970, denying petitioner's motion for leave to appeal to the Court of Appeals, is printed as Appendix B, infra.

3. The order of the United States Court of Appeals for the Second Circuit, dated June 21, 1971, denying petitioner's motion, is printed as Appendix C, infra.

QUESTIONS PRESENTED

1. Whether the Circuit Court of Appeals has jurisdiction to entertain petitioner's motion, dated May 27, 1971, for declaratory orders, to protect petitioner's civil and constitutional rights to prosecute his appeals?

2. Whether the Circuit Court of Appeals erred in denying petitioner's application to declare that the State Court injunction order prohibiting petitioner from retaining counsel is a violation of his constitutional and civil rights?

3. Whether petitioner's civil and constitutional rights, to freedom of speech, to counsel, to access to the courts and public and quasi-public officials and the pursuit of his civil and criminal remedies against violators of law are denied to him; and whether his liberty and property were denied, without due process of law?

CONSTITUTIONAL PROVISIONS INVOLVED

1. Article 1V No. 2 (1). Petitioner is denied the same

privileges accorded to citizens of the State of New York and several states.

2. The Fifth Amendment. Petitioner is deprived of his liberty and property without due process of law.

3. The Fourteenth Amendment. Petitioner is denied due process of law and equal protection thereof.

4. Title 18 U.S.C.A. Par. 241; Title 42 U.S.C.A. Par. 1983 and Par. 1985. Petitioner is deprived of his constitutional and civil rights.

STATEMENT

1. An action was commenced by respondent, John J. Bower, and the law firm of Bower, O'Connor & Taylor, predecessor of respondent, Bower, O'Connor & Gardner, in the Supreme Court of the State of New York, County of New York, on or about March 25, 1968, hereinafter referred to as the "Bower Action", against petitioner and others, for slander, malicious prosecution and conspiracy to molest and harass said respondents, and for an injunction.

2. Some eight years prior to the commencement of the "Bower Action", petitioner commenced an action, in April 1961, in Supreme Court of the State of New York, County of New York, entitled: Ernest Klein, Plaintiff, against Securities Clearance Corp., Commercial Bank of North America, Amalgamated Bank and Trust Co., Belgian-American Banking Corporation, Jacques Fisher, Jerome Ackerman, Jack Ackerman, Max Ackerman, Barbara Ackerman, Ethel Ackerman and John Bower, hereinafter referred to as the "Klein Action".

3. In the "Klein Action", petitioner was seeking damages of over $640,000.00, in connection with his securities of stocks and bonds which

were pledged by petitioner with Securities Clearance Corp., one of the defendants in the ' 'Klein Action", and which securities were not returned to petitioner, on demand therefor, but were converted by certain defendants in the "Klein Action" including respondent, John J. Bower, the president of said defendant Securities Clearance Corp. The "Klein Action" came on for trial in April of 1966, and was dismissed by the court, at the end of petitioner's case.

4. During the pendency of the ' 'Klein Action", and before trial, various affidavits were submitted on behalf of respondent, John J. Bower, which affidavits, petitioner discovered, after trial, on information and belief, to be perjurious and fraudulent, and some of the signatures affixed thereon, forgeries.

5. After the trial of the "Klein Action", between the end of 1966 and the beginning of 1968, petitioner also discovered evidence of fraudulent manipulations practiced by certain defendants, including respondent, John J. Bower, with petitioner's stocks and bonds.

6. During his investigations, petitioner further discovered, upon information and belief, and from the opinions and affidavits of handwriting experts. (a) that certain signatures alleged to be those of one William F. O'Connor as Notary Public, on affidavits filed in the said ' 'Klein Action", were not said William F. O'Connor's genuine signatures, and (b) that a signature of said William F. O'Connor affixed on an affidavit, as affiant, was not signed by the said William F. O'Connor.

7. Petitioner thereafter further discovered that numerous original affidavits and exhibits had disappeared from the court file, in the ' 'Klein Action".

8. In order to have the original exhibits available for a possible new trial in the said "Klein Action", petitioner obtained an order from Mr. Justice William C. Hecht, Jr., at

Special Term, Part 1, Supreme Court, New York County, made on March 6, 1968, sealing the court file in the

"Klein Action", and also directing the District Attorney of New York County to return all papers in his possession to the said court file in the "Klein Action", at the New York County Clerk's office.

9. On March 29, 1968, petitioner made another motion in Supreme Court, New York County, Special Term, Part 1, for an order, requiring Bank of North America, a former defendant in the ' 'Klein Action", to deposit in the court file of the "Klein Action", various exhibits, marked in evidence or for identification at said trial, containing over 100 (one hundred) signatures, reading John J. Bower; and requiring Millard & Green, Exqs., attorneys for one of the other defendants in the "Klein Action", to deposit in the said court file, another exhibit marked in evidence at said trial, to wit, a check for $3,029.27, made out payable to the order of petitioner, bearing an original signature, reading John J. Bower.

10. Respondent, John J. Bower, had testified at the trial of the ' 'Klein Action", that none of said signatures were his.

11. Respondent, John J. Bower, who was the key defendant in the "Klein Action" was served with all such motion papers and hence was apprised of the fact that petitioner was preparing to move for a new trial in the "Klein Action", and obtain possible criminal prosecution against respondent, John J. Bower, and others.

12. It was on March 29, 1968, during the pendency of petitioner's second motion in the "Klein Action" for an order, to deposit the other exhibits, while petitioner was in the courtroom of Special Term, Part I, that the summons in the "Bower Action", was served upon petitioner.

The complaint in the "Bower Action" was served on or

about April 26, 1968.

13. Prior to service of petitioner's answer to the "Bower Action", respondent John J. Bower, and respondent Bower, O'Connor & Gardner's predecessor, Bower, O'Connor & Taylor, moved at Special Term, Part 1,
Supreme Court, New York County, for a Preliminary Injunction Order, against petitioner and others.

14. Mr. Justice Murphy, Supreme Court, New York County, granted the motion, and signed the ' 'Order Granting Preliminary Injunction," on July 10, 1968, a copy of which is printed as Appendix A, infra.

15. Petitioner then moved in the New York County Supreme Court, at Special Term, Part 1, to modify said injunction order, and advised the court that said injunction was unconstitutional and unrestricted, that some limitations of the order should be made to protect petitioner's pending actions, and his present and future civil rights.

16. The motion was referred to said Mr. Justice Murphy, who, by order dated October 31, 1968, denied it, without opinion.

17. Petitioner appealed from said order to the Appellate Division, First department, which affirmed the said order of Mr. Justice Murphy, dated October 31, 1968, without opinion, by order dated January 15, 1970.

18. Petitioner then made a motion at the New York State Court of Appeals, for leave to appeal to the Court of Appeals of the State of New York, which dismissed his motion, on the ground, that the said preliminary injunction order was not a final order, and hence not appealable. A copy of the order of the New York State Court of Appeals is printed in Appendix B.

19. Thereafter, in August of 1970, petitioner commenced an action in the U. S. District Court for the

Eastern District of New York, under No. 70 Civil 63, against the Supreme Court of New York County, for a declaratory judgment that the said preliminary injunction order was unconstitutional.

20. The District Court, for the Eastern District of New York by memorandum and order dated August 25, 1970, dismissed the action without prejudice, to commence on action against the respondents, under 42 U.S.C.A. Par. 1983 and Par. 1985 (2).

21. Accordingly, on January 15, 1971, petitioner commenced the action, 71 Civil 213, in the U.S. District Court for the Southern District

of New York, against the respondents herein, for damages resulting from violating petitioner's constitutional and civil rights; for declaratory orders, that the said State court injunction order is unconstitutional and in violation of petitioner's constitutional and civil rights; for damages resulting from the respondents' various acts of fraud and abuse of the processes of the courts, and for conspiracy to violate petitioner's constitutional and civil rights, seeking damages in substantial sums of monies; and for other relief.

22. After all the respondents were duly served in the new action, they did not answer the complaint, but brought on a motion for summary judgment to dismiss the action against them, and for other relief.

23. Petitioner brought on a motion, by order to show cause, dated February 8, 1971, asking the District Court of the Southern district of New York for various relief, and mainly to declare that petitioner has the right to retain counsel who shall assist him in the prosecuting of his new action, and in his motion, and to oppose the aforementioned motion brought on by the respondents. The Hon. District Judge Wyatt, by memorandum and order dated February 11, 1971, filed

February 16, 1971, denied petitioner's motion.

24. Thereafter petitioner moved for an order of reconsideration of his motion by a three Judge Panel of the District Court, and for other relief. The Hon. Judge Frankel, by endorsed memorandum and order dated March 10, 1971, dismissed petitioner's motion.

25. Thereafter the respondents' motion for summary judgment came on to be heard before Hon. District Judge Bonsel, on March 16, 1971, on which date, an attorney, Mr. Robert A. Katz, Esq., appeared in open court on behalf of petitioner and orally requested an adjournment of the respondents' motion until another motion, which he, Mr. Katz, was preparing in the ' 'Bower Action", will be decided.

26. Mr. Katz, also Esq., declared, in open court, that he can not represent petitioner in his action in the District Court, for the Southern District of New York, because he will be held in violation and in contempt of court, by said injunction order.

27. Mr. Katz, Esq., thereafter submitted an affidavit, sworn to May 23, 1971, explaining his position to the District Court and requesting the District Court to defer the dismissal of the action.

28. The Hon. District Judge Bonsal denied Mr. Katz, Esq.'s application and granted summary judgment, in favor of respondents, dismissing petitioner's new action.

29. Petitioner respectfully submits that not one word of argument was made in opposition to respondents' motion to dismiss the action, nor on the merits of the action, neither by petitioner, nor by said Mr. Katz, Esq., because of the simple fact, that without possessing an order and declaration by the

District Court, that petitioner and/or his attorney are permitted to prosecute the action and to prepare papers and/or to argue in opposition to respondents' motion, without being held in violation of the injunction order, they could not submit any papers in opposition, and could not argue in opposition.

30. Petitioner served and filed Notices of Appeal, in each of the three decisions rendered by the aforementioned three judges of the District Court.

31. After paying the Docketing Fee at the Clerk's office of the U.S. Court of Appeals for the Second Circuit, petitioner brought on a motion, by Notice of Motion, dated May 27, 1971, with affidavits and exhibits, seeking a declaratory order, permitting petitioner to engage counsel for the purpose of prosecuting the said appeals, and for other relief. The respondents submitted papers in opposition and a Notice of Cross Motion.

32. The Circuit Court of Appeals for the Second Circuit denied petitioner's motion, and separately denied respondents' Cross Motion.

A copy of the order, dated June 21, 1971, is printed as Appendix C, infra.

ARGUMENT

In view of the grave and serious allegations in your petioner's complaint in this action, relating to the deprivation of your petitioner's constitutional and civil rights, elemental justice and fairness dictates that your petitioner be permitted by this Court to retain counsel to prosecute the said action and the appeals therein.

Your petitioner stands in dire need of an attorney to represent him in the appeals in this action and to prepare the

necessary legal papers and documents and memorandum of law, and to appear and argue before the Court, on his behalf.

Petitioner respectfully submits that the Circuit Court of Appeals for the Second Circuit has jurisdiction to grant petitioner's motion, dated May 27, 1971, in every respect, or at least partially, for the relief requested therein, because petitioner's basic constitutional, private and property rights were involved and violated.

Consequently, the Circuit Court of Appeals for the Second Circuit was in error in not granting petitioner's motion.

CONCLUSION

The petition for a writ of certoriari should be granted

Respectfully submitted,
ERNEST KLEIN
Petitioner, Pro Se
5517 Fifteenth Avenue
Brooklyn, New York 11219
Tel. UL. 1 - 5390

Order Granting Preliminary Injunction

At a Special Term, Part I thereof, of the Supreme Court of the State of New York held in and for the County of New York at the Court House located at 60 Centre Street, New York, New York on the 10 day of July, 1968.

Present: HON. FRANCIS T. MURPHY, JR.,
Justice.

(SAME TITLE)

Plaintiffs having duly moved this Court for an Order, granting a preliminary injunction enjoining the defendants, their agents, servants, employees and attorneys, during the pendency of this action, from interfering directly or indirectly with plaintiffs and/or their business and/or profession, and from interfering with plaintiffs dividually and severally or as partners, their employees, former employees, agents, servants and families directly or indirectly and directing that the defendants jointly and severally cease and desist from bringing further charges, accusations, further claims, and from instigating and/or bringing prosecutions and public inquiry by public or quasi-public officials against the plaintiffs, individually and severally or as partners, their employees, former employees, agents, servants and families directly or indirectly and from making complaints to any public, quasi-public or provate agencies against the plaintiffs indivdually and severally or as partners, their employees, former employees, agents, servants and families

affidavit of John J. Bower sworn to the 17th day of May, 1968, the supplemental affidavit of William F. O'Connor sworn to the 28th day of May, 1968, the supplemental affidavit of Carolyn Schiff sworn to the 28th day of May, 1968, the summons dated the 25th day of March, 1968 and verified complaint, sworn to the 5th day of April, 1968, together with proff of due service thereof upon Benjamin Isaacs, Defendant Pro Se, proff of due service thereof upon Benjamin J. Taruskin, Esq., substituted attorney for Defendant Pro Se, Benjamin Isaacs, proof of due service thereof upon Anthony J. De Marco, Jr., Esq., attorney for defendant, Albert B. Lewis and proof of due service thereof upon defendants, Ernest Klein, Nathan N. Schorr and Lajos Laufer, all in support of said motion and the notice of cross-motion of defendant, Benjamin Isaacs dated the 21st day of May, 1968, the affidavit of defendant, Benjamin Isaacs, sworn to the 21st day of May, 1968, the reply affidavit of defendant, Benjamin Isaacs, sworn to the 27th day of May, 1968 in opposition to the motion and in support of the cross-motion and the notice of cross-motion of defendant, Albert B. Lewis, undated, the affirmation of David S. Worgan dated the 16th day of May, 1968, the affirmation of defendant, Albert B. Lewis, dated the 17th day of May 1968, the affirmation of Robert W. Nishman, Esq., dated the 24th day of May, 1968, the reply affirmation of defendant, Albert B. Lewis, dated the 28th day of May, 1968 in opposition to the motion and in support of the cross-motion; and upon a hearing on the 31st day of May, 1968, and Bower, O'Connor Taylor, Esqs., attorneys for the plaintiffs, William F. O'Connor, Esq., of counsel, appearing in support of said motion and in opposition to the cross-motions; and Benjamin J. Taruskin, Esq., appearing on behalf of defendant, Benjamin Isaacs and Anthony J. De Marco, Jr., Esq., appearing on behalf of defendant, Albert B. Lewis, and defendants, Ernest Klein, Nathan N. Schorr and Lajos Laufer not appearing in opposition to the within motion;

directly or indirectly and/or through representatives or attorneys, and from issuing or causing to be issued summonses and/or complaints and/or any civil process against the plaintiffs dividually and severally or as partners, their employees, agents, servants and families directly or indirectly including but not limited to any motion in any action directed towards the plaintiffs, individually and severally or as partners, their employees, former employees, agents, servants and families directly or indirectly for an order staying any civil proceeding now pending against the plaintiffs individually and severally or as partners, their employees, former employees, agents, servants and families directly or indirectly, and forbidding the defendants jointly and severally from instigating any civil process against the plaintiffs, individually and severally or as partners, their employees, former employees, agents, servants and families directly or indirectly and further enjoining the defendants jointly and severally from instigating others, and their agents, servants and employees, in making any contacts with the plaintiffs, individually and severally or as partners, their employees, former employees, agents, servants and families directly or indirectly, and enjoining the defendants jointly and severally from causing or instigating other person or persons from otherwise harassing the plaintiffs, individually and severally or as partners, their employees, former employees, agents, servants and families directly or indirectly; and the said motion having regularly come on to be heard on the 31st day of May, 1968.

Now, on reading and filing the Notice of Motion dated May 7, 1968, the affidavit of John J. Bower sworn to the 7th day of May, 1968, the affidavit of William F. O'Connor sworn to the 7th day of May, 1968, the affidavit of Mary Anna Macukas sworn to the 7th day of May 1968, the affidavit of Carolyn Schiff sworn to the 7th day of May, 1968, the supplemental

indirectly and further enjoining the defendants jointly and severally from instigating others and their agents, servants and employees from making any and all contacts with the plaintiffs, indivdually and severally or as partners, their employees, former employees, agents servants and families directly or indirectly and enjoining the defendants jointly and severally from causing and instigating other person and persons from otherwise harassing the plaintiffs, individually and severally or as partners, their employees, former employees, agents, servants and families directly or indirectly; and it appearing that the plaintiffs are entitled to a preliminary injunction against defendants, Ernest Klein, Nathan N. Schorr and Lajos Laufer on the grounds that there has been a sufficient showing that the defendants, Ernest Klein, Nathan N. Schorr and Lajos Laufer and threatening to or about to do, or are doing or procuring or endeavoring to have done, actions in violation of the plaintiffs' rights respecting the subject of the action and tending to render any judgment herein ineffectual; and further, it appearing that there has been sufficient showing that the defendants, Ernest Klein, Nathan N. Schorr and Lajos Laufer, if permitted to commit and/or continue the acts complained of during the pendency of this action, would produce injury to the plaintiffs, and it further appearing that as to the request for a temporary injunction to be directed against defendants, Benjamin Isaacs and Albert B. Lewis, there are present substantial questions as to said defendants' commission of the acts charged, and as to whether or not they were occupying privileged or quasi-privileged positions at that time;

Now, on motion of Bower, O'Connor & Taylor Esq., attorneys for the plaintiffs, it is

ORDERED that the motion for a preliminary injunction is granted as against defendants, Ernest Klein, Nathan N. Schorr and Lajos Laufer, upon condition that the plaintiffs file an

and due deliberation having been had, and it appearing that a cause of action exists in favor of the plaintiffs and against the defendants, Ernest Klein, Nathan N. Schorr and Lajos Laufer for a permanent injunction enjoining and staying them from interferring directly or indirectly with plaintiffs and/or their business and/or profession, and from interfering directly or indirectly with the plaintiffs indivdually and severally or as partners, their employees, former employees, agents, servants and families and directing that the defendants jointly and severally cease and desist from bringing further charges, accusations, further claims, instigating and/or bringing prosecutions and public inquiry by public or quasi-public officials against the plaintiffs indivdually and severally or as partners, their employees, former employees, agents, servants and families directly or indirectly, from making complaints to any public, quasi-public or private agencies against the plaintiffs, indivdually and severally or as partners, their employees, former employees, agents, servants and families directly or indirectly and/or through representatives or attorneys, and from issuing summonses and/or complaints and any civil process against the plaintiffs indivdually and severally or as partners, their employees, former employees, agents, servants and families directly or indirectly, including but not limited to any motion in any action directed towards the plaintiffs individually and severally or as partners, their employees, former employees, agents, servants and families directly or indirectly and for a stay of any civil proceeding now pending against the plaintiffs, individually and severally or as partners, their employees, former employees, agents, servants and families directly or indirectly and/or forbidding the defendants jointly and severally from instigating and/or issuing or causing to be issued any civil process against the plaintiffs, individually and severally or as partners, their employees, former employees, agents, servants and families directly or

agents, servants and families directly or indirectly; and it is further

ORDERED that any and all civil proceedings now pending against the plaintiffs, individually and severally or as partners, their employees, former employees, agents, servants and families directly or indirectly be and they hereby are stayed; and said defendants jointly and severally be and they hereby are enjoined from instigating and/or issuing or causing to be issued any civil process against the plaintiffs individually and severally or as partners, their employees, former employees, agents, servants and families directly or indirectly; and said defendants jointly and severally be and they hereby are enjoined themselves and they are enjoined from instigating others and their agents, servants and employees from making any and all contacts with the plaintiffs individually or severally or as partners, their employees, former employees, agents, servants and families, directly or indirectly; and said defendants jointly and severally be and they hereby are enjoined themselves and they are enjoined from causing or instigating any other person or persons otherwise to harass the plaintiffs, individually and severally or as partners, their employees, former employees, agents, servants and families directly or indirectly; and said defendants jointly and severally be and they hereby are enjoined from harassing the plaintiffs individually and severally or as partners, their employees, former employees, agents, servants and families directly or indirectly by the use of public, quasi-public and private agencies or by making and instigating complaints against the plaintiffs individually and severally or as partners, their employees, former employees, agents, servants and families directly or indirectly; and said defendants jointly and severally be and they hereby are enjoined themselves and they are enjoined from instigating or directing any other persons, their agents, servants and employees directly or indirectly to make

undertaking in the sum of One Thousand ($1,000.00) Dollars, conditioned that the plaintiffs, if it is finally determined that they were not entitled to an injunction, will pay to the defendants, Ernest Klein, Nathan N. Schorr and Lajos Laufer, all damages and costs which may be sustained by reason of the injunction and such motion is denied as to the defendants Isaacs and Lewis, and it is further

ORDERED that Ernest Klein, Nathan N. Schorr and Lajos Laufer, defendants herein, their agents, servants and employees be and they are hereby enjoined during the pendency of this action from interfering directly or indirectly with plaintiffs and/or their business and/or profession, and from interfering with the plaintiffs individually and severally or as partners, their employees, former employees, agents, servants and families and directly or indirectly; and the said defendants jointly and severally are ordered to cease and desist, and are enjoined from bringing further charges, accusations, further claims, instigating and/or bringing prosecutions and public inquiry by public or quasi-public officials or private agencies against the plaintiffs individually and severally or as partners, their employees, former employees, agents, servants and families directly or indirectly, from making complaints to any public, quasi-public or private agencies against the plaintiffs individually and severally or as partners, their employees, former employees, agents, servants and families directly or indirectly and/or through representatives or attorneys, and from issuing or bringing summonses and/or complaints including counterclaims in the within action and from issuing any civil process against the plaintiffs individually and severally or as partners, their employees, former employees, agents, servants and families directly or indirectly, including but not limited to any motion in any action directed towards the plaintiffs, individually and severally or as partners, their employees, former employees,

contact with the plaintiffs individually and severally or as partners, their employees, former employees, agents, servants and families and are enjoined from contacting persons in regard to their family status, making inquiries about them, their children, their habits, physical appearance, daily routine from acquaintances, neighbors, friends of said plaintiffs, individually and severally or as partners, their employees, former employees, agents, servants and families directly or indirectly and are enjoined themselves and they are enjoined from instigating and directing any other persons, their agents, servants and employees directly or indirectly to make representations to lead people to believe that the plaintiffs individually and severally or as partners, their employees, former employees, agents, servants and families are under inquiry by private or public agencies for any possible misconduct, and said defendants, Ernest Klein, Nathan N. Schorr and Lajos Laufer, are directed to cease and desist from, and are enjoined from, uttering or causing to be uttered, orally or in writing, and from communicating to any persons, remarks and/or statements in reference to plaintiffs individually and severally or as partners, their employees, former employees, agents, servants and families directly or indirectly impugning their honesty or integrity in their individual lives of in the conduct of their professional practice,

And the defendants, Benjamin Isaacs and Albert B. Lewis having cross-moved this Court for an order granting summary judgement to said defendants and said cross-motions having regularly come on to be heard on the 31st day of May 1968,

Now, on reading and filing the notice of cross-motion of defendant, Benjamin Isaacs, dated May 21, 1968, the affidavit of defendant, Benjamin Isaacs, sworn to the 21st day of May, 1968, the reply affidavit of defendant, Benjamin Isaacs, sworn

to the 27th day of May, 1968 and on proff of due service thereof and upon the summons dated March 25, 1968 and the verified complaint sworn to the 5th day of April, 1968, all in support of the cross-motion, and on reading and filing the notice of cross-motion of defendant, Albert B. Lewis, undated, the affirmation of David S. Worgan, Esq., dated the 16th day of May, 1968, the affirmation of Albert B. Lewis, dated the 17th day of May, 1968, the affirmation of Robert W. Nishman, Esq., dated the 24th day of May, 1968 and the reply affirmation of Albert B. Lewis dated the 28th day of May, 1968, all in support of the cross-motion and on proof of due service thereof, and on reading and filing the affidavit of John J. Bower, sworn to the 24th day of May, 1968 in opposition to defendant, Benjamin Isaacs' cross-motion and on reading and filing the affidavit of John J. Bower sworn to the 24th day of May, 1968, in opposition to defendant, Albert B. Lewis' cross-motion and upon the hearing held on the 31st day of May, 1968, and Benjamin J. Taruskin, Esq., appearing for defendant Benjamin Isaacs, in support of said cross-motion for summary judgment and Anthony J. De Marco, Jr., Esq., appearing for defendant, Albert B. Lewis, in support of said cross-motion for summary judgment and Bower, O'Connor & Taylor, Esqs., by William F. O'Connor, Esq., attorneys for plaintiffs appearing in opposition thereto, and due deliberation having been had, it is

ORDERED that the cross-motion by defendant, Benjamin Isaacs and the cross-motion by defendant, Albert B. Lewis for summary judgment be and the same hereby are denied without prejudice to a renewal of the cross-motions by defendants, Benjamin Isaacs and Albert B. Lewis after plaintiffs' completion of examinations before trial of defendants.

Enter:

F. T. M.,
J. S. C.

Filed
Jul. 10, 1968
Co. Clerk's Office New York

APPENDIX B

STATE OF NEW YORK - COURT OF APPEALS

At a Court of Appeals for the State of New York, held at court of Appeals Hall in the City of Albany on the Fourth day of June A.D. 1970

PRESENT, Hon. Stanley H. Fuid, Chief Judge, presiding.

John J. Bower and Bower,
O'Connor & Taylor, a partnership,

Respondents

Vs.

Ernest Klein

Appellant,

Nathan N. Schorr & ors.,

Defendants

A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution.

APPENDIX C

No. 6 6/21/71 No. 71-1445
UNITED STATES COURT OF APPEALS

Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twenty-first day of June, one thousand nine hundred and seventy-one.

Ernest Klein,

Plaintiff-Appellant

v.

John J. Bower, William F. O'Connor, John Gardner, Bower, O'Connor & Gardner A Partnership, Mary Ann Oates, Mary Anna Macukas and Carolyn Schiff,

Defendants-Appellees.

It is hereby ordered that upon consideration of the motion made herein by appellant pro-se by notice of motion dated May 27, 1971 to declare that appellant has unrestricted right to retain counsel to represent him in the appeals herein; to declare that counsel so retained cannot be prosecuted for

contempt of court; to extend the time to perfect the appeals and to retain counsel; for leave to argue this motion without being placed in jeopardy or violation of the State Preliminary Injunction Order, that the motion to modify the State Court Injunction be and it hereby is denied.

A. DANIEL FUSARO
Clerk,

BEFORE: HON. HENRY J. FRIENDLY,
Chief Judge,
HON. J. JOSEPH SMITH,
HON. PAUL R. HAYS,
Circuit Judges